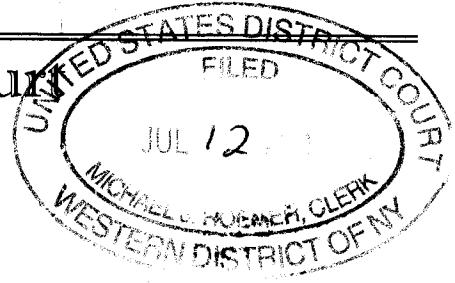


United States District Court

for the
Western District of New York



United States of America

v.

TIMOTHY McCABE

Defendant

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Case No. 11-M- 101

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

Between on or about the date of August 6, 2007 through August 26, 2008 in the county of Erie in the Western District of New York, the defendant, violated 18 U.S.C. § 1344(1) and 1344(2), offenses described as follows:

knowingly executing a scheme and artifice to defraud a financial institution; and knowingly executing a scheme and artifice to obtain money, funds and credits, owned by and under the custody and control of a financial institution by means of false and fraudulent pretenses, representations and promises.

This criminal complaint is based on these facts:

Continued on the attached sheet.

Complainant's signature

Daniel Batt, United States Secret Service

Printed name and title

Judge's signature

Sworn to before me and signed in my presence.

Date: July 12, 2011

City and State: Buffalo, New York

H. KENNETH SCHROEDER, JR., U.S. Magistrate Judge

Printed name and title

AFFIDAVIT IN SUPPORT OF A CRIMINAL COMPLAINT

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

DANIEL BATT, being duly sworn, deposes and says:

1. I am employed as a Special Agent (SA) of the United States Secret Service, Department of Homeland Security and am currently assigned to the Buffalo Field Office. I have been so employed since 2008.

2. As a Federal Agent, I am authorized to investigate violations of laws of the United States and to execute warrants issued under the authority of the United States. Specifically, some of the areas for which I have investigative responsibility are bank fraud, identity theft, and fraudulent documents. I have participated in numerous bank fraud investigations which have resulted in successful prosecution.

3. This affidavit is submitted in support of a criminal complaint against TIMOTHY MCCABE for violations of Title 18, United States Code, Sections 1344(1) and 1344(2), Bank Fraud.

4. The statements contained in this affidavit are based upon my own personal investigation and information provided by other

agents and law enforcement officers. Since this affidavit is submitted for the limited purpose of securing a criminal complaint, I have not included each and every fact known to me concerning this investigation.

5. At all times relevant to this complaint, Erie Metro Federal Credit Union (EMFCU) was a federally insured financial institution, located in the Western District of New York. In August and September of 2007, three vehicle loans were granted by EMFCU in the name of Theresa Morales (Morales). Morales is the wife of Timothy MCCABE (MCCABE).

Loan # 360980-21 for 2002 Ford F250 and 2002 BMW X-5

6. On August 6, 2007, EMFCU granted vehicle loan application #360980-21 to Morales, in the amount of \$40,000, for the purchase of a 2002 Ford F-250 pick-up truck and a 2002 BMW X-5 sport utility vehicle. Both vehicles were to be purchased from the Dane Motor Company, in Virginia Beach, Virginia. The listed borrower on this application is Theresa Morales.

7. Representatives from EMFCU advised they did not speak to or interview Morales during the application process for this loan. Representatives from EMFCU advised that MCCABE acted as the "Power

of Attorney" for Morales, and in a face-to-face interview with representatives with EMFCU, MCCABE provided Morales' identifying information necessary for the completion of this loan application. EMFCU retained a notarized copy of the General Power of Attorney, purportedly executed by Theresa Morales.

8. On or about August 6, 2007, MCCABE and Morales returned the loan application to EMFCU. On this date, Morales signed this application in the presence of EMFCU representatives. Representatives from EMFCU advised this was the only occasion EMFCU had contact with Morales.

9. On August 6, 2007, EMFCU issued an official check, in the amount of \$40,000, paid to the order of, "Dane Motor Company" and "Theresa Morales," referencing a 2002 BMW X-5 and a 2002 Ford F250. This official check was endorsed "Dane Motor Company" and was deposited into an RBC Bank USA (RBC) checking account, which was opened and managed by "United Wholesalers, DBA, Dane Motor Company."

10. According to records from RBC, Morales opened and maintained a checking account at RBC. On August 7, 2007, a \$40,000 check from "United Wholesalers Inc, DBA, Dane Motor Company" was

paid to the order of "Theresa Morales". This check was drawn against the RBC account managed by "United Wholesalers Inc, DBA Dane Motor Company", and referenced in paragraph 9, above. This \$40,000 check referenced a "transfer", and was deposited into Morales' RBC personal checking account.

11. The funds from the EMFCU official check were not sent to "Dane Motor Company" as payment for the purchase of a 2002 Ford F-250 pick-up truck, or for the purchase of a 2002 BMW X-5 sport utility vehicle. From August 7, 2007, through August 13, 2007, at least five personal checks made payable to "Theresa Morales", "Tim McCabe" and "Cash" were written against the \$40,000 of funds deposited into Morales' RBC Bank personal checking account. Collectively, these checks amounted to \$22,500. The remaining funds were dissipated through an ATM withdrawal, multiple debit check card personal purchases, and a large payment to a credit card.

12. A condition of this loan agreement was that the BMW X-5 and the Ford F250 vehicles were to be registered and re-titled in New York State, to permit EMFCU to file lien holds against the titles of the vehicles and perfect its security interest in the loan. In furtherance of this representation, a New York State

Department of Motor Vehicles Notice of Lien was executed in the name of "Theresa Morales" on August 6, 2007 relating to the BMW X-5 and the Ford F250. Representatives from EMFCU advised after EMFCU issued the \$40,000 for the purchase of the vehicles, EMFCU discovered neither vehicle had been re-titled or registered in New York State. As a result, EMFCU was unable to file liens against either vehicle's title, and could not perfect its interest for this loan.

13. Representatives from EMFCU advised that the last payment received for this loan occurred on May 12, 2008. EMFCU has not received any further payments on this loan. Multiple attempts by EMFCU to meet with MCCABE, to obtain collateral for this loan, have been unsuccessful. On August 26, 2008, EMFCU charged off \$36,121.30 as a result of the default on this loan.

Loan # 360980-22 for a 2003 Infiniti G-35

14. On August 8, 2007, EMFCU granted vehicle loan application #360980-22 to Morales, in the amount of \$20,000, for the purchase of a 2003 Infiniti G-35. The listed borrower on this application is Theresa Morales. This vehicle was to be purchased from "BHT of NY Inc," a used car dealership, located at 15 Skillen Street,

Buffalo, NY. The Bill of Sale for this vehicle was retained by EMFCU. It is dated August 7, 2007, and contains a buyer's signature in the name of "Theresa Morales". The seller's signature appears to match the signature of MCCABE.

15. Erie County Real Property records show that Morales owned 15 Skillen Street, Buffalo, NY, from February, 2007 until November, 2007, when she sold it to "T. McCabe Inc." Both "BHT of NY Inc" and "T McCabe Inc" are registered corporations in the State of New York with an address of 15 Skillen Street, Buffalo, NY. Representatives from EMFCU advised that MCCABE informed EMFCU that he is the owner of both corporations. At the time EMFCU granted the loan for the 2003 Infiniti G-35, Morales owned 15 Skillen Street, the address of the automotive dealership from which the vehicle was purchased.

16. Representatives from EMFCU advised they did not speak to or interview Morales during the application process for this loan, and that MCCABE acted as the "Power of Attorney" for Morales. In a face-to-face interview with representatives with EMFCU, MCCABE provided Morales' identifying information necessary for the completion of this loan application on behalf of his wife. EMFCU retained a notarized copy of the General Power of Attorney, purportedly executed by Morales.

17. On August 10, 2007, MCCABE returned the application for this loan to EMFCU. It was signed in the name of "Theresa Morales". This application was not signed in the presence of EMFCU representatives. The signature on the application does not appear to match the signature on Morales' U.S. Passport or the signature on Theresa Morales' Florida Driver's License.

18. On August 10, 2007, EMFCU issued official check #098090 in the amount of \$20,000, paid to the order of, "BHT of NY Inc" and "Theresa Morales," referencing a 2003 Infiniti. On August 13, 2007, this official check was endorsed "BHT of NY" and was deposited into an RBC business checking account which was opened and managed by Theresa Morales.

19. From August 7, 2007 through August 13, 2007, at least three personal checks made payable to "Theresa Morales", "Tim McCabe" and another undetermined individual were written against the \$20,000 in the RBC Bank business checking account referenced above. Collectively, these checks amounted to \$16,620. One of these checks made payable to "Theresa Morales" in the amount of \$10,000 was deposited into Morales' RBC personal checking account.

20. On December 3, 2010, Erie Metro Federal Credit Union (EMFCU) revised the vehicle loan application by changing the

vehicle from the purchase of a 2003 Infiniti G-35 to the purchase of a 2002 Ford F-250. The listed borrower on this application remained Theresa Morales. No Bill of Sale for this vehicle was provided to EMFCU. The revised loan application appears to have been signed by MCCABE, purportedly acting as the "Power of Attorney" for Theresa Morales.

21. As part of this loan agreement, the purchased vehicle was to be registered and re-titled in New York State, to permit EMFCU to file lien holds against the title of the vehicle and to perfect its security interest in the loan. A New York State Department of Motor Vehicles Notice of Lien was executed in the name of "Theresa Morales," on August 10, 2007, relating to the Infiniti vehicle. Additionally, a New York State Department of Motor Vehicles Notice of Lien was executed by MCCABE on December 3, 2007, relating to the 2002 Ford pick-up. Representatives from EMFCU advised that neither the 2003 Infiniti nor the 2002 Ford F250 has been registered or re-titled in New York State. As a result, EMFCU was unable to file a lien against either vehicles' title and could not perfect its interest for loan #360980-22.

22. Representatives from EMFCU advised the last payment received for loan #360980-22 occurred on May 12, 2008, and EMFCU has not received any further payments on this loan. Multiple

attempts by EMFCU to meet with MCCABE, to obtain collateral for this loan, have been unsuccessful. On August 26, 2008, EMFCU charged off \$18,054.26 as a result of MCCABE's default on this loan.

Loan # 360980-23 for a 2000 Ranger Boat with Trailer

23. On September 17, 2007, EMFCU granted vehicle loan application #360980-23 to Morales, in the amount of \$28,500, for the purchase of a 2000 Ranger fishing boat, and a 2000 Ranger fishing boat trailer. The listed borrower on this application is Theresa Morales. The boat and trailer were to be purchased from Glen Burlage, of 148 Arrgone Street, Kenmore, NY. A Bill of Sale for this vehicle was retained by EMFCU, with a buyer's signature signed in the name of "Theresa Morales" and with the seller's signature signed in the name of "Glenn Burlage".

24. The signature on the Bill of Sale does not appear to match the signature on Morales' U.S. Passport or the signature on Morales' Florida Driver's License.

25. Representatives from EMFCU advised they did not speak to or interview Morales during the application process for loan #360980-23. MCCABE acted as the "Power of Attorney" for Morales,

and in a face-to-face interview with representatives with EMFCU, MCCABE provided Morales' identifying information necessary for the completion of this loan application. EMFCU retained a notarized copy of the General Power of Attorney, which appears to have been executed by Morales. On September 17, 2007, MCCABE returned the application to EMFCU. It was signed with MCCABE's signature, followed by "POA", for Power of Attorney. This application was not signed in the presence of EMFCU representatives.

26. On September 17, 2007, EMFCU issued an official check in the amount of \$28,500, paid to the order of, "Glenn Burlage," referencing a "2000 Ranger R93VS Boat" and "Theresa Morales". This check was endorsed "Glenn Burlage to Theresa Morales". On September 17, 2010, this official check was deposited into a Bank of America personal checking account, belonging to Morales. Records from Bank of America revealed that from September 17, 2007 through September 28, 2007, the \$28,500 from EMFCU was dissipated through multiple debit check card personal purchases at retail stores and gourmet coffee shops, payments to credit cards, transfers to a savings account, personal checks and monthly payments to eight (8) separate mortgage loans. The funds were not used as payment for the purchase of the 2000 Ranger fishing boat, or the 2000 Ranger fishing boat trailer.

27. As part of this loan agreement, the purchased vehicles were to be registered and re-titled in New York State, to permit EMFCU to file lien holds against the titles of the vehicles and perfect its interest in this loan. In furtherance of this representation, two (2) New York State Department of Motor Vehicles Notices of Lien were executed in the name of "Theresa Morales" on September 9, 2007, relating to the Ranger boat and Ranger boat trailer. Representatives from EMFCU advised that neither the boat nor the trailer has been registered or re-titled in New York State. As a result, EMFCU was unable to file liens against either vehicle's title and could not perfect its interest for loan #360980-23.

28. Representatives from EMFCU advised the last payment received for loan #360980-23 occurred on May 12, 2008, and EMFCU has not received any further payments on this loan. Multiple attempts by EMFCU to meet with MCCABE to obtain collateral for this loan have been unsuccessful. On August 26, 2008, EMFCU charged off \$26,218.73 as a result of MCCABE's default on this loan.

WHEREFORE, I respectfully submit that there is probable cause to believe that Timothy MCCABE did violate Title 18, United States

Code, Sections 1344(1) and 1344(2), Bank Fraud, by knowingly executing a scheme to defraud Erie Metro Federal Credit Union, and by knowingly executing a scheme and artifice to obtain money, funds, and credits, owned by and under the custody and control of Erie Metro Federal Credit Union, by means of false and fraudulent pretenses.

Daniel Batt
DANIEL BATT
Special Agent
U.S. Secret Service

Sworn to before me this 12th
day of July, 2011.

H. Kenneth Schroeder, Jr.
H. KENNETH SCHROEDER, Jr.
United States Magistrate Judge